

EXHIBIT 17

DEPOSITION OF ERIC MONTGOMERY

PAGE 1 SHEET 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
CIVIL ACTION NO. 04-11522-WGY

STEVEN R. KINCAID,

PLAINTIFF,

VS.

BANK OF AMERICA
CORPORATION,

DEFENDANT.

DEPOSITION

OF

ERIC A. MONTGOMERY

AT CHARLOTTE, NORTH CAROLINA

JUNE 1, 2005

REPORTER: IRA ANDERSON
NOTARY PUBLIC

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Mr. Montgomery

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A P P E A R I N G

FOR THE PLAINTIFF: Mr. David J. Fine
LAW OFFICES OF DAVID J. FINE
Three Center Plaza, Suite 400
Boston, Massachusetts 02108-2003FOR THE DEFENDANT: Mr. Richard J. Kane
McGUIRE WOODS, L.L.P.
Suite 2900
Bank of America Corporate Center
100 North Tryon Street
Charlotte, North Carolina 28202

IN ATTENDANCE: Mr. Steven R. Kincaid

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1 This is the deposition of Eric A. Montgomery,
2 taken in accordance with the Federal Rules of Civil
3 Procedure in connection with the above case.
4 Pursuant to Notice, this deposition is being
5 taken in the offices of Hamilton, Fay, Moon, Stephen,
6 Steele & Martin, P.L.L.C., 2020 Charlotte Plaza,
7 201 South College Street, Charlotte, North Carolina,
8 beginning at 9:02 a.m. on June 1, 2005, before Ira
9 Anderson, Notary Public.

10
11 MR. FINE: This deposition is
12 being taken in accordance with
13 the Federal Rules of Civil
14 Procedure.

15 MR. KANE: Before we begin I
16 want the record to reflect that

17 by presenting Mr. Montgomery
18 for his deposition here, we are
19 not waiving any privilege as to
20 his role as assistant general
21 counsel for Bank of America,
22 including attorney-client and
23 work product privileges. Okay.

24
25 Eric A. Montgomery, upon first being duly

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- 1 policy, right?
- 2 A. Yes.
- 3 Q. And you also agreed with me that one of the
- 4 things that an important policy means is that
- 5 it's important for the people who are the
- 6 right people to know about it be notified,
- 7 right?
- 8 A. I think I said that before.
- 9 Q. Okay. And isn't it also part of what it means
- 10 to be an important policy that the people who
- 11 should be notified about something are
- 12 notified promptly?
- 13 A. That would be good.
- 14 Q. Was it your practice in 2003 to notify people
- 15 in the business unit affected by a claim of
- 16 discrimination promptly?
- 17 A. I don't know. I can't say that it was. We
- 18 tried to.
- 19 Q. Well, if you didn't notify people promptly,
- 20 you weren't doing your job correctly, right?
- 21 A. I wouldn't say that.
- 22 Q. Why not?
- 23 A. Because I wouldn't.
- 24 Q. Well, you've agreed that the policy against
- 25 discrimination is important, right?

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- 1 A. Haven't I said that before? We've asked that
- 2 a couple of times now.
- 3 Q. You've agreed that it's important, right?
- 4 A. Yes.
- 5 Q. And you agree that when a claim of
- 6 discrimination is made, it's important that
- 7 the right people know about it, right?
- 8 A. Sure.
- 9 Q. And you agree that the right policy include
- 10 the people in the business unit affected by
- 11 the claim of discrimination, right?
- 12 A. I've said that, yes.
- 13 Q. And therefore, it's your job to make sure that
- 14 those people know promptly, right?
- 15 A. It's my job to make sure they are aware of it,
- 16 yes.
- 17 Q. Promptly, right?
- 18 A. What do you define promptly as?
- 19 Q. Well, how do you define promptly?
- 20 A. Depends on the situation.
- 21 Q. Well, Mr. Montgomery, in your role as
- 22 assistant general counsel to Bank of America
- 23 you have responsibilities, right?
- 24 A. Yes.
- 25 Q. And one of your responsibilities is to make

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- 1 sure that the bank's policy against
- 2 discrimination is properly implemented, right?
- 3 A. What do you mean by properly implemented?
- 4 Q. Do you ever use the word properly,
- 5 Mr. Montgomery? Do you not know what that
- 6 means?
- 7 A. Yes, but I'm trying to understand what you
- 8 mean by the word implemented.
- 9 Q. Well, let me get at it this way: If you
- 10 received a claim of discrimination from a
- 11 lawyer, would you consider it to be okay if
- 12 you didn't notify anybody about that claim for
- 13 a year?
- 14 A. No.
- 15 Q. Would you consider it to be okay if you didn't
- 16 notify anybody about that claim for two weeks?
- 17 A. I don't know how to answer that.
- 18 Q. Well, Mr. Montgomery, if you don't know how to
- 19 answer that, who is going to make that
- 20 decision for you?
- 21 MR. KANE: Objection.
- 22 A. I don't know.
- 23 Q. You're the person who has to decide how
- 24 quickly you notify people of claims of
- 25 discrimination that you receive, right?

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- 1 A. Yes.
- 2 Q. Okay. What was your practice in 2003 with
- 3 regard to how quickly you notified the
- 4 business unit affected when you received a
- 5 claim of discrimination?
- 6 A. I can't say that we had a uniform policy or
- 7 practice. I think we made every attempt to
- 8 contact people as soon as practicable.
- 9 Q. And when you say we, you're talking about you?
- 10 My question was about you personally, right?
- 11 You understood that?
- 12 A. I don't know if I would personally do it. I
- 13 would probably have my paralegal do it.
- 14 Q. But it's your responsibility?
- 15 A. Yes; yeah.
- 16 Q. Okay. And did you have a practice in 2003 as
- 17 to how quickly you made sure that the business
- 18 unit affected would be notified of a claim of
- 19 discrimination that you received?
- 20 A. Again, I don't know if we had a uniform
- 21 practice in place.
- 22 Q. You use the word we. I'm not asking about we.
- 23 I'm asking if --
- 24 A. I don't know if I had a uniform practice in
- 25 place at that time. I can't say that I had a

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- 1 uniform practice.
- 2 Q. Okay.
- 3 A. We made an attempt to do it as soon as we
- 4 could.
- 5 Q. And by saying we, you mean I?
- 6 A. Yes.
- 7 Q. Okay. In 2003 it was your personal practice
- 8 to try to notify people affected by a claim of
- 9 discrimination as soon as practicable, right?
- 10 A. That's correct.
- 11 Q. Okay. And what was your experience in terms,
- 12 in 2003, with regard to what as soon as
- 13 practicable meant in terms of days?
- 14 A. It may have been a few days.
- 15 Q. Okay. So it was your practice in 2003 to make
- 16 sure that the business unit affected was
- 17 notified of a claim of discrimination within a
- 18 few days, right?
- 19 A. Yes.
- 20 Q. And if that didn't happen, you would not be
- 21 doing your job correctly, right?
- 22 A. What do you mean by doing my job correctly?
- 23 What do you mean, doing my job? What do you
- 24 mean by that?
- 25 Q. Well, you said that it was your practice in

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- 1 2003 to make sure that people in the business
- 2 unit affected knew about a claim of
- 3 discrimination within a few days, right?
- 4 A. Yes.
- 5 Q. And if that didn't happen, that would be
- 6 contrary to your practice, right?
- 7 A. Yes.
- 8 Q. And if the people in the business unit didn't
- 9 learn about this for several weeks, that would
- 10 really be not good, right?
- 11 MR. KANE: Objection. The
- 12 question is, did he follow his
- 13 practice, not whether or not he
- 14 was doing his job, not whether
- 15 or not it was good or bad.
- 16 MR. FINE: Mr. Kane, you know
- 17 at least as well as I do that
- 18 that is a totally improper
- 19 objection.
- 20 MR. KANE: Well, you keep
- 21 beating a dead horse. We're
- 22 going to be here for days if
- 23 you continue to ask the same
- 24 questions until you get the
- 25 answer you think you want

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- 1 MR. FINE: I'm happy to stand
- 2 on the transcript. I'll submit
- 3 this to any Judge who can make
- 4 a decision as to whether I am
- 5 being unreasonable or not.
- 6 MR. KANE: Fine; fine.
- 7 Q. Mr. Montgomery, do you have the question in
- 8 mind?
- 9 A. Could you repeat it, please?
- 10 Q. If the people in the business unit affected by
- 11 a claim of discrimination that you are
- 12 responsible for didn't find out about it for
- 13 two weeks, that would be not good?
- 14 MR. KANE: Objection.
- 15 A. I mean, I just don't know how to respond to
- 16 that. Not good by whose standards?
- 17 Q. Well, suppose it was you who were making the
- 18 claim of discrimination. Suppose you
- 19 submitted a claim of discrimination to
- 20 somebody at the bank and you found out that
- 21 that claim of discrimination was not
- 22 communicated to the business unit affected for
- 23 two weeks. How would you feel about that?
- 24 A. Maybe not good.
- 25 Q. Right. Now, Mr. Montgomery, when you notified

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- 1 people in 2003 in the business unit affected
- 2 about a claim of discrimination, how did you
- 3 do it?
- 4 A. It may have been either a phone call or
- 5 e-mail.
- 6 Q. Okay. And when you notified them by phone,
- 7 did you make a record of your notifying them
- 8 by phone?
- 9 A. Probably not.
- 10 Q. If you were trying to determine today whether
- 11 you had notified people in the business unit
- 12 affected by phone of a claim of discrimination
- 13 that you had received in 2003, what would you
- 14 do?
- 15 A. I doubt I kept a record of a phone because I
- 16 rarely made phone calls.
- 17 Q. You say you rarely made phone calls?
- 18 A. (Witness nods head affirmatively.)
- 19 Q. Okay. So did you usually notify people in the
- 20 business unit affected of claims of
- 21 discrimination by e-mail?
- 22 A. More likely than not.
- 23 Q. Okay. And did you keep a record of those e-
- 24 mails?
- 25 A. I can't -- doubt there is a record of those.

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- 1 Deborah Norcross?
 2 A. Yes.
 3 Q. And did you receive it by fax on May 20, 2003?
 4 A. I'm assuming I did based on -- it says faxed
 5 on that date, so I'm assuming it came through
 6 on that date.
 7 Q. Okay. What did you do when you received this
 8 letter?
 9 A. I'm not sure. I probably sent it to my
 10 paralegal to put into the file. I reviewed
 11 it.
 12 Q. You read it?
 13 A. Yes.
 14 Q. Okay. And you had written Deborah Norcross on
 15 April 30, 2003, correct?
 16 A. Yes.
 17 (Whereupon, Ms. Burroughs
 18 joined the deposition.)
 19 Q. And this now was some three weeks later?
 20 A. Yes.
 21 MR. FINE: Mr. Kane, off the record
 22 for a minute.
 23 (Whereupon, there was had a
 24 discussion off the record which
 25 was not reported and

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- 1 Ms. Burroughs left the
 2 deposition.)
 3 Q. You had written Deborah Norcross on April 30,
 4 2003, correct?
 5 A. Yes.
 6 Q. And this now was almost three weeks later,
 7 right?
 8 A. Yes.
 9 Q. Okay. By the time you received this May 20,
 10 2003, letter, had you notified Sheila
 11 Burroughs and the other people in the business
 12 unit affected of Mr. Kincaid's claim of
 13 discrimination?
 14 A. I'm not sure.
 15 Q. Well, earlier this morning you said that it
 16 was your practice to notify people in the
 17 business unit affected within several days,
 18 right?
 19 A. Yes.
 20 Q. Okay. And it is now nearly a month from
 21 Deborah Norcross's initial letter and three
 22 weeks since the time that you responded to
 23 Ms. Norcross's letter, right?
 24 A. Yes.
 25 Q. Okay. So wouldn't it have been your practice

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- 1 to have been in touch with people in the
 2 business unit affected by this date, by
 3 May 20, 2003?
 4 A. Yes.
 5 Q. Okay. Do you recall whether you had, in fact,
 6 been in touch with people in the business unit
 7 affected?
 8 A. No, I don't.
 9 Q. You might have been in touch with them, you
 10 might not have been?
 11 A. That's correct.
 12 Q. Okay. Now, if you look at the second -- well,
 13 read the first paragraph of this letter to
 14 yourself and then I have some questions about
 15 it.
 16 A. (Witness reviews document.) Okay.
 17 Q. Okay. One of the first things that Deborah
 18 Norcross does is she is asking about the
 19 status of your investigation, right?
 20 A. Yes.
 21 Q. Did you ever respond to Ms. Norcross's inquiry
 22 on that subject?
 23 A. Not in writing.
 24 Q. Did you respond any other way?
 25 A. I recall vaguely having a conversation with

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- 1 her, but I couldn't tell you the details of
 2 it.
 3 Q. Okay. If you had a conversation with her,
 4 would you have made a note or a record of it?
 5 A. Possibly, but I don't recall.
 6 Q. Was it your practice that when you spoke with
 7 attorneys for employees making claims of
 8 discrimination against the bank in 2003, to
 9 make records of such conversations?
 10 A. Depends on the substance of it.
 11 Q. All right. So that means that sometimes you
 12 did and sometimes you didn't?
 13 A. Yes.
 14 Q. And what determined whether you made a record
 15 of it or not?
 16 A. I guess if the conversation had any substance
 17 or merit to it.
 18 Q. All right. In the third sentence of this
 19 paragraph Ms. Norcross is saying to you that
 20 Mr. Kincaid has been receiving contradictory
 21 messages from Ms. Burroughs regarding his
 22 performance. Do you see that?
 23 A. Yes.
 24 Q. Did that prompt you to contact Ms. Burroughs?
 25 A. I don't recall.

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- 1 Q Would it have been your practice to contact a
2 person like Ms. Burroughs once you had
3 received a statement like this in a letter in
4 2003?
5 A. It may have. I just, I don't recall.
6 Q. All right. Now, in the last sentence of this
7 letter, I mean of this first paragraph,
8 Ms. Norcross is saying that although
9 Mr. Kincaid has requested a copy of his hiring
10 letter several times, no one has provided it
11 to him. Do you see that sentence?
12 A. Yes.
13 Q. Okay. Now, was it your understanding in May
14 of 2003 that an employee of the bank had a
15 right to get a copy of his hiring letter if he
16 requested it?
17 A. I mean, I'm not familiar with all the
18 personnel file guidelines, but I don't know
19 where he asked for that from, I don't know.
20 I'm sure he could have gotten a copy of it
21 from somewhere.
22 Q. Well, are you saying, Mr. Montgomery, that you
23 don't know, as you sit here today, whether an
24 employee of the bank has a right to get a copy
25 of his hiring letter on request?

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- 1 A. I mean, I'm sure that's governed by our
2 personnel file guidelines, I'm sure.
3 Q. Okay. And as you sit here today you just
4 don't remember what it says on that subject?
5 A. No, exactly; yeah.
6 Q. Well, here's a lawyer for an employee who's
7 making a claim of discrimination against the
8 bank, right?
9 A. Yes.
10 Q. And this employee, his lawyer is saying, is
11 trying to get a copy of his hiring letter,
12 right?
13 A. Yes.
14 Q. Okay. Isn't that something that you would
15 have looked into on receiving this?
16 A. It could have been, yes.
17 Q. Okay. You might have looked into it, but you
18 just don't remember whether you did or not?
19 A. That's right.
20 Q. Would you have any reason for not looking into
21 it?
22 A. No.
23 Q. All right. Now, please read to yourself the
24 second paragraph of this letter.
25 A. (Witness reviews document.) Okay.

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- 1 Q. Now, in that paragraph Ms. Norcross is
2 expressing concern on behalf of her client,
3 right?
4 A. Yes.
5 Q. Okay. And is that something that would have
6 been a concern of yours?
7 A. Sure.
8 Q. Okay. Because once an employee makes a claim
9 of discrimination, the bank has to be
10 scrupulous in the way that they deal with that
11 employee, right?
12 A. Yes.
13 Q. And here Mr. Kincaid's lawyer is writing you a
14 second letter saying that she's really
15 concerned, right?
16 A. Yes.
17 Q. Now, wouldn't it have been your practice in
18 2003 to do something when you received a
19 letter like this?
20 A. Possibly, yes.
21 Q. Okay. And what would it have been your
22 practice to do?
23 A. To follow up and make sure we're getting the
24 information to respond to it.
25 Q. Okay. And did you do that?

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- 1 A. I don't think so. I can't recall.
2 Q. And why is it that you don't think that you
3 did follow up?
4 I just, I don't recall having followed up at
5 all at this time.
6 Q. All right. Now, you are familiar with the
7 Bank of America's policy against
8 discrimination, right?
9 A. Yes.
10 Q. And it's a part of that policy that Bank of
11 America promises its employees that when they
12 make claims of discrimination, the Bank of
13 America will carefully investigate those
14 claims, right?
15 I can't state those words there particularly,
16 but there is some implication of that.
17 Q. Yeah. I mean, that's the general idea, right?
18 A. Without having seen the policy, I think that's
19 the gist of it, yes.
20 Q. In fact, that's one of the things that the
21 Bank of America does to encourage people to
22 work for it, right?
23 A. That's what?
24 Q. In other words, the Bank of America says,
25 prospective employees of the bank, you can

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- 1 basis of that?
- 2 MR. KANE: You're making
- 3 arguments, you're asking for
- 4 his legal opinion. His legal
- 5 opinion based upon what he
- 6 learned is protected and the
- 7 legal advice he gives.
- 8 MR. FINE: I'm asking --
- 9 MR. KANE: I mean, this is --
- 10 MR. FINE: I'm asking --
- 11 MR. KANE: So, you know, you
- 12 want to make argument? Where
- 13 is the harm that he didn't get
- 14 an investigation? Where is the
- 15 harm? He would have been
- 16 terminated anyway, wouldn't he?
- 17 Or would he not? Who can
- 18 answer? You're making legal
- 19 argument.
- 20 Q. Mr. Montgomery, you've heard the statement
- 21 that the bank's attorney Just made. Did you
- 22 hear that statement?
- 23 MR. KANE: I made my argument.
- 24 Q. Yes, you heard Mr. Kane's argument, right?
- 25 A. Yes.

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- 1 Q. Do you agree with Mr. Kane that the fact that
- 2 the bank didn't conduct an investigation that
- 3 it said it was going to conduct and that it
- 4 should have conducted was something that made
- 5 no difference?
- 6 MR. KANE: That's not what I
- 7 said. I said would it have
- 8 made a difference in his
- 9 termination.
- 10 Q. Well, let me ask it this way: Do you believe
- 11 in the ethical principle that when a person
- 12 makes a mistake, they ought to acknowledge it?
- 13 A. Yes.
- 14 Q. And the bank made a mistake here, right?
- 15 MR. KANE: In what way?
- 16 Q. The bank didn't conduct an investigation that
- 17 it should have conducted, right?
- 18 MR. KANE: Object to the form.
- 19 A. It ultimately conducted one.
- 20 Q. They didn't conduct an investigation that they
- 21 should have conducted prior to the termination
- 22 of employee, right?
- 23 A. Probably not.
- 24 Q. Okay. And that was wrong?
- 25 A. It was a mistake.

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- 1 Q. It was a mistake, right?
- 2 A. Yes.
- 3 Q. And an ethical corporation acknowledges its
- 4 mistakes, right?
- 5 A. Some do, some don't. I can't answer for all
- 6 corporations in America.
- 7 Q. Well, what I'm asking you is, does an ethical
- 8 corporation acknowledge its mistakes or does
- 9 an ethical corporation conceal its mistakes,
- 10 especially when those mistakes relate to their
- 11 policy against discrimination, their
- 12 declared --
- 13 MR. KANE: Objection to the
- 14 form.
- 15 Q. -- their declared and stated policy against
- 16 discrimination?
- 17 A. What is your question again?
- 18 Q. When it involves a corporation's stated policy
- 19 against discrimination, when the corporation
- 20 fails to conduct an investigation that it
- 21 should have conducted, does an ethical
- 22 corporation acknowledge that fact?
- 23 MR. KANE: Objection.
- 24 A. I'm assuming some do and some don't.
- 25 Q. Okay. Would you want to be associated with

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- 1 the kind of corporation that doesn't --
- 2 MR. KANE: Objection; don't
- 3 answer that. This is getting
- 4 ridiculous.
- 5 Q. Would you?
- 6 MR. KANE: Don't answer. Do
- 7 you have any other lines of
- 8 questions calling other than
- 9 for what his opinions are?
- 10 MR. FINE: At this point I'd
- 11 like to take a brief break and
- 12 I think we're close to the end
- 13 of this witness.
- 14 (Whereupon, a recess was taken
- 15 from 11:38 a.m. to 11:47 a.m.)
- 16 MR. FINE: I'd like to have
- 17 marked as the next exhibit a
- 18 document Bates marked BofA-24.
- 19 (Whereupon, Plaintiff's Exhibit
- 20 Number 6 was marked and
- 21 identified for the record.)
- 22 Q. Mr. Montgomery, do you recognize what has Just
- 23 been marked as an exhibit?
- 24 A. Yes.
- 25 Q. What is that?

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1 A. It's the bank's policy on discrimination and
2 sexual harassment.

3 Q. Okay. I'd like to direct your attention to
4 the next-to-last paragraph on this page.

5 A. Sure.

6 Q. And I'm going to read this paragraph for the
7 record and then I have some questions for you.

8 A. Okay.

9 Q. "The company investigates reported incidents
10 of sexual harassment, other discrimination,
11 and retaliation. Investigations are conducted
12 in as discreet a manner as is compatible with
13 a thorough investigation of the complaint."

14 Do you see that?

15 A. Yes.

16 Q. All right. Now, is one of your duties and
17 responsibilities at the bank to ensure that
18 this policy is complied with?

19 A. Yes.

20 Q. Okay. And that has been one of your duties
21 and responsibilities since you were first
22 employed by the bank in 2001, right?

23 A. Yes.

24 Q. Okay. Now, when it says the company

25 investigates reported incidents of sexual

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1 harassment, other discrimination, and
2 retaliation -- do you see that?

3 A. Yes.

4 Q. Would you agree with me that a fair reading of
5 that sentence is that the company conducts
6 such investigations before it decides to take
7 an action as drastic as terminating the
8 employee?

9 MR. KANE: Object to the form.

10 A. Yes.

11 Q. All right. And if you look at the second
12 sentence there, not just is the bank saying to
13 its employees that it conducts investigations,
14 it's saying to its employees that it conducts
15 thorough investigations, right?

16 A. Yes.

17 Q. Okay. And here the bank conducted no
18 investigation of Mr. Kincaid's complaints of
19 discrimination prior to his being terminated,
20 right?

21 A. Probably not.

22 Q. Okay. And that was a violation of the bank's
23 stated policy, right?

24 MR. KANE: Objection.

25 A. It failed to happen

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1 Q. And that's a violation of the policy, right?

2 MR. KANE: Objection.

3 A. I mean, if that's what you want to call it.

4 Q. Well, Mr. Montgomery, you just told me that
5 one of your duties and responsibilities at the
6 bank is to ensure that this policy is
7 implemented, right?

8 A. Yes.

9 Q. And in order to ensure that this policy is
10 implemented, you have to know when something
11 is a violation of the policy and when
12 something is not a violation of the policy,
13 right?

14 A. Yes.

15 Q. Because if you don't know that, you can't do a
16 very good job of implementing the policy, can
17 you?

18 A. That's correct.

19 Q. Okay. So what I want from you is a clear and
20 affirmative statement, was the bank's failure
21 to conduct any investigation of Mr. Kincaid's
22 claim of discrimination prior to his
23 termination a violation of its policy?

24 MR. KANE: Objection.

25 A. I guess I would characterize it as a failure

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1 to act, a failure to investigate.

2 Q. And the failure to investigate was a violation
3 of the bank's policy, right?

4 MR. KANE: Wait a minute. You
5 just asked him prior to his
6 termination?

7 MR. FINE: Right, and he said,

8 he testified earlier --

9 MR. KANE: There's nothing in
10 this that says anything about
11 when it will be conducted.

12 MR. FINE: Right, but I
13 asked --

14 MR. KANE: And it doesn't say
15 promptly, and you used the word
16 promptly.

17 MR. FINE: Yes, Mr. Kane, but
18 before we got here I asked
19 Mr. Montgomery several
20 questions ago, does he
21 interpret that as being before
22 the bank takes such a drastic
23 action as terminating the
24 employee, and Mr. Montgomery

25 said yes.

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- 1 MR. KANE: To which I objected.
2 MR. FINE: Right, but he
3 answered it nonetheless.
4 MR. KANE: Okay.
5 Q. So the ladies and gentlemen of this Jury,
6 Mr. Montgomery, would like a clear and
7 forthright statement from you as to whether
8 the bank violated its policy or not. Can you
9 tell them, please?
10 MR. KANE: Objection.
11 A. We conducted an investigation. It was,
12 unfortunately, late.
13 Q. At what point did you realize that the bank
14 had made a mistake in its handling of
15 Mr. Kincaid's case?
16 MR. KANE: Objection. You're
17 talking with regard to the
18 investigation?
19 MR. FINE: Right.
20 A. I guess it would have occurred when I got
21 information that he had been terminated.
22 Q. Right. And upon getting that information, did
23 you do anything to try to remedy the fact that
24 the bank had violated its policy?
25 A. I think we talked about that before. I

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- 1 think -- I can't recall what I did, but we
2 took some actions.
3 Q. Okay. Did you give notice of any of those
4 actions to Mr. Kincaid himself?
5 A. I would not have done that.
6 Q. Well, what is the good of taking action unless
7 the victim of the action is notified?
8 A. Notified when? I mean, shortly after he was
9 terminated he filed an EEOC charge. It put it
10 into a different form at that point.
11 Q. Yes. And did the bank acknowledge to the EEOC
12 that it had violated its policy?
13 MR. KANE: Objection.
14 A. I don't think so. I don't think -- no.
15 Q. Right, they didn't, the bank didn't. So what
16 happened here was a double wrong. First of
17 all, the bank violated its policy, and second
18 of all, the bank has refused to admit it,
19 right?
20 MR. KANE: Objection. Don't
21 answer that.
22 Q. Now, the Bank of America has a policy with
23 regard to the destruction of e-mails, right?
24 A. I'm certain that it does.
25 Q. Are you familiar with what that policy is?

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- 1 A. I'm somewhat familiar.
2 Q. What is it?
3 A. Specifically, what are you asking me?
4 Q. Well, does the bank permit the destruction of
5 e-mails on a routine basis?
6 A. I think e-mails are purged from our system
7 within a certain period of time.
8 Q. Okay. And do you know what that period of
9 time is?
10 A. I think it's 90 days, I believe, yes.
11 Q. Okay. Now, in your experience at the bank, in
12 all the investigations that you have
13 participated in regarding claims of
14 discrimination, have you ever examined
15 e-mails?
16 A. I'm sure I may have.
17 Q. And the bank conducts a lot of internal
18 communications by e-mail, right?
19 A. Yes.
20 Q. Okay. So if it's going to conduct a thorough
21 investigation of a claim of discrimination,
22 one of the things the bank has got to do is to
23 examine e-mails, right?
24 A. That might be a part of the investigation.
25 Q. Sure, because sometimes the evidence of the

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- 1 discriminatory intent could be in an e-mail,
2 right?
3 A. Possibly.
4 Q. Okay. So does the bank have a policy or a
5 practice that when a claim of discrimination
6 is made, that people have to be notified, do
7 not destroy your e-mails regarding this
8 person?
9 A. I don't know if there is a policy that exists
10 particularly to discrimination claims.
11 Q. Well, if the bank doesn't have that policy or
12 practice, shouldn't it have?
13 MR. KANE: Objection.
14 A. I mean, I think it has a policy in terms of
15 the destruction of e-mails, but I don't know
16 if it's particular to discrimination claims,
17 is all I'm saying.
18 Q. I understand that. But what I'm saying, what
19 I'm asking, what I'm trying to get at is, the
20 bank has this policy that says when claims of
21 discrimination are made, we at the bank
22 conduct a thorough investigation?
23 A. Yeah.
24 Q. And you agreed with me a moment ago that one
25 of the things that needs to be done when a

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- 1 A. I'm not aware. I mean, there may be. I'm not
2 sure. I don't know.
- 3 Q. Okay. And you may have answered this question
4 before and, if you have, I apologize. But is
5 it the case that you don't recall whether
6 another claim of unlawful discrimination has
7 been made involving Sheila Burroughs?
- 8 A. Not to my knowledge.
- 9 Q. Are you aware of any other cases in which a
10 claim of discrimination was made and no
11 investigation was done prior to the time that
12 the employee was terminated?
- 13 A. Not that I can recall.
- 14 Q. Do you have any explanation as to how it
15 happened in this case?
- 16 A. I think about the only explanation that could
17 be offered would be it fell through the
18 cracks.
- 19 Q. I'm sorry?
- 20 A. It fell through the cracks.
- 21 Q. All right. Now, I believe one of
22 Mr. Kincaid's job titles was market
23 information manager. Are you aware of any
24 claims against the Bank of America of improper
25 harassment, discrimination, or retaliation

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- 1 Q. How many such claims have there been?
- 2 A. Since I've been there?
- 3 Q. Yes.
- 4 A. Oh, gosh, I don't have an exact number. I
5 haven't -- you know, there have been numerous
- 6 Q. Over 50?
- 7 A. I'm sure.
- 8 Q. Over 100?
- 9 A. I'm sure.
- 10 Q. Of those claims, how many involve claims of
11 age discrimination?
- 12 A. Gosh, I have no way of telling that. I don't
13 know.
- 14 Q. How many claims have there been of improper
15 retaliation?
- 16 A. Again, I couldn't specify.
- 17 Q. Are you aware of any claims against the bank
18 of improper harassment, discrimination, or
19 retaliation made by any person who left the
20 employ of Defendant's competitive analysis
21 unit?
- 22 A. Not specifically.
- 23 Q. Okay.
- 24 A. I mean, without knowing a name, I couldn't
25 tell you because I just don't know.

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- 1 made by any other market information manager?
- 2 A. Not that I'm aware of.
- 3 Q. Are you aware of any claims of improper
4 harassment, discrimination, or retaliation
5 made by any person formerly or currently
6 employed in Defendant's customer analysis
7 modeling and research department?
- 8 A. Say that again, now.
- 9 Q. Are you aware of any claims of improper
10 harassment, discrimination, or retaliation
11 made by any person formerly or currently
12 employed in Defendant's customer analysis
13 modeling and research department?
- 14 A. Not that I'm aware of. Unless you have some
15 names of employees, I don't know, because I'm
16 not quite sure who would have been in that
- 17 group. I'm not aware of that specific group.
18 I mean, it could be, but I'm not sure.
- 19 Q. Okay. In your entire tenure at the bank are
20 you aware of anybody else besides Mr. Kincaid
21 who has made a claim of improper harassment,
22 discrimination, or retaliation?
- 23 A. Anyone in the bank?
- 24 Q. Yes.
- 25 A. Sure, yes

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- 1 Q. Okay. Is the competitive analysis unit a unit
2 where there have been claims of age
3 discrimination?
- 4 A. Not to my knowledge.
- 5 Q. Are you aware of any employees in the
6 competitive analysis unit who were terminated
7 between October 1, 2002, and May 31, 2003?
- 8 A. No, I couldn't tell you any names of anybody.
- 9 Q. Are you familiar with a person named Tim
10 Megacy?
- 11 A. No.
- 12 Q. With regard to the claims of discrimination,
13 retaliation, and harassment that you have
14 become aware of since you've been at the bank,
15 has the bank taken any remedial measures in
16 light of those claims?
- 17 A. I can think of one case I handled.
- 18 Q. Okay. Can you tell us about that?
- 19 A. Very vaguely. It's been a long time. I can
20 recall an associate, and I believe she may
21 have worked in Atlanta, who was terminated and
22 she raised an issue. We investigated and
23 found that the termination probably was not
24 the right decision and she was offered some
25 remediation. What form, I couldn't tell you

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